



E-News from KPMG's EU Tax Centre



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E-News from the EU Tax Centre

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KPMG's EU Tax Centre helps you understand the complexities of EU tax law and how this can impact your business, enabling you to better predict how rules will develop and how to leverage opportunities and minimize risks arising from EU tax law.

E-News provides you with EU tax news that is current and relevant to your business. KPMG's EU Tax Centre compiles a regular update of EU tax developments that can have both a domestic and a cross-border impact. CJEU cases can have implications for your country.

[Latest CJEU, EFTA and ECHR](#)

[CJEU decision in the X-GmbH case on German CFC rules in light of the Standstill clause](#)

On February 26, 2019, the Court of Justice of the European Union (CJEU) rendered its decision in the X-GmbH case (C-135/17). The case concerns the derogation from the prohibition on restrictions to the free movement of capital with non-EU countries (also referred to as the 'Standstill Clause'), and its application to the German controlled foreign company (CFC) rules. The CJEU mainly left it to the referring court to assess whether the German rules are in line with EU law, considering first whether they fall within the scope of the Standstill

Clause, and secondly whether they are proportionate in light of the pursued objective to prevent tax avoidance.

For more information, please refer to [KPMG's EuroTaxFlash](#).

CJEU decision on the Beneficial Owner concept under the Interest and Royalties Directive and the Parent Subsidiary Directive

On February 26, 2019, the CJEU rendered two landmark decisions on the interpretation of the beneficial owner concept in cases where the Interest and Royalties Directive (joined cases N Luxembourg, X Denmark, C Denmark and Z Denmark) and the Parent-Subsidiary Directive (joined cases T Denmark and Y Denmark) apply. The CJEU concluded that it is for the referring courts to assess whether the arrangements under review constitute an abuse under EU law, taking into account in particular the existence of conduit companies.

For more information, please refer to [KPMG's EuroTaxFlash](#).

CJEU decision on unrealized capital gains under free movement of persons

On February 26, 2019, the CJEU rendered its decision in the *Martin Wächter v. Finanzamt Konstanz* case (C-581/17). The CJEU concluded that the German exit tax on German nationals moving to Switzerland is contrary to the free movement of persons guaranteed by the EU-Switzerland Agreement.



Infringement Procedures & Referrals to CJEU

Referrals to the CJEU

CJEU preliminary ruling on deductibility of financial charges in a reverse merger

On December 3, 2018, reference was made to the CJEU by a Portuguese court for a preliminary ruling in the case *Totalmédia - Marketing Directo e Publicidade S.A. v Autoridade Tributária e Aduaneira* (C-751/18). The case concerns whether in a reverse merger the non-deductibility of interest and other financial charges of the acquired company is compatible with the EU Merger Directive 2009/133.



State aid

CJEU decision on Spanish football clubs' State aid

On February 26, 2019, the General Court of the EU rendered its decision in the *Athletic Club v. Commission* (T-679/16) and *Fútbol Club Barcelona v. Commission* (T-865/16) cases. The court rejected the European Commission's decision to classify a tax regime applicable to four Spanish professional football clubs as state aid.

For more information, please refer to [KPMG's TaxNewsFlash](#).



EU Institutions

EUROPEAN COMMISSION

European Commission's DG TAXUD management plan for 2019

On February 12, 2019, the European Commission's DG TAXUD published its blueprint for the 2019 tax year. The Commission aims to make progress on pending tax proposals, increase cooperation between Member States, and assist on the national transposition of EU legislation in force.

For more information, please refer to the [blueprint](#).

EUROPEAN PARLIAMENT

Draft report approved by the TAX3 Committee

On February 27, 2019, the Special Committee on Financial Crimes, Tax Evasion and Tax Avoidance (TAX3) approved a draft report on numerous topics including tax evasion, tax avoidance, cooperation between tax authorities, and financial crimes. The draft report recommends establishing a European financial police force and an EU anti-money laundering watchdog, enacting countermeasures against the US for failure to comply with FATCA reciprocity, and ensuring better protection for whistleblowers and investigative journalists.

European Parliament published study on the impact of digitalization on international tax

On February 22, 2019, the European Parliament's Policy Department published a study on the impact of digitalization on international tax matters. The study, prepared at the request of the European Parliament's TAX3 Committee, focuses on the tax challenges the digitalized economy presents. The study also discusses the international reactions to the EU's proposal to introduce a digital services tax (DST).

For more information, please refer to the [study](#).



OECD

Multilateral Convention developments

On February 25, 2019, Finland deposited its instrument of ratification for the Multilateral Convention (2016) (MLI). The MLI will enter into force in relation to Finland on June 1, 2019, and the MLI coverage of its bilateral treaties will depend on the final adoption positions taken by other countries. In addition, the MLI was approved by the Spanish Congress and the Ukrainian Parliament on February 21 and 28, 2019, respectively. Moreover, on February 28,

2019, the Canadian Standing Committee on Finance ratified the MLI and submitted it to the House of Commons for further approval.



Local Law and Regulations

Cyprus

[Circular issued on tax residency test for individuals](#)

On February 25, 2019, a circular on guidance on the tax residency test for individuals contained in Law No. 119(I)/2017 was published by the Tax Department. The circular clarifies that the 60-day test to determine residency for individuals does not apply to directors of a Cyprus tax resident company that delegates such authority to an alternate or a nominee director at any time during the corresponding taxable year.

Finland

[Tax administration updates guidance on CFC income taxable in Finland](#)

On February 25, 2019, new guidance on CFC legislation was issued by the tax authorities. The updated guidance reflects the recent modifications to the CFC Finnish legislation.

Germany

[Draft bill on tax measures in connection with United Kingdom's withdrawal from the EU](#)

On February 21, 2019, a draft bill on tax measures in relation to the withdrawal of the United Kingdom from the European Union was adopted by the lower house of the parliament. The bill still needs to be approved by the Federal Council.

[Non-application decree regarding jouissance rights under the Austria-Germany treaty](#)

On February 21, 2019, the Ministry of Finance issued a non-application decree in relation to the decision of the Federal Financial Court on the case I R 53/09 in consideration of the CJEU decision of September 12, 2019 in Austria v. Germany case (C-648/15). The decree commands that the basic principles settled in the Federal Financial Court decision regarding jouissance rights under the Austria-Germany treaty are not applicable to any other case with similar facts.

Guernsey

[Proposed extension to the disclosure obligation of beneficial ownership information to limited partnerships with legal personality](#)

On February 7, 2019, amendments to the legislation on Guernsey's register of beneficial owners were submitted to the local assembly that propose to extend the disclosure obligation

of beneficial ownership information to limited partnerships with legal personality registered under the Limited Partnerships Guernsey Law 1995.

Ireland

[Update of the tax and duty manual on interest payments](#)

On February 27, 2019, eBrief No. 036/19, updating the tax and duty manual Part 35-31-07, was published. The manual addresses the treatment of interest payments made to residents of tax treaty countries and EU Member States, and the deductibility of interest and withholding taxes in relation to tax treaties signed by Ireland.

[Public consultation on transfer pricing rules](#)

On February 19, 2019, the Department of Finance announced that a public consultation on the reformed Irish Transfer Pricing rules was launched. The consultations request feedback on the implementation of the OECD 2017 Transfer Pricing Guidelines, the application of Transfer Pricing rules to small and medium sized businesses, and the introduction of documentation requirements. The consultation closes on April 2, 2019.

Italy

[Resolution clarifying tax treatment of hybrid instruments](#)

On February 26, 2019, Resolution No. 30/E on the tax treatment of Additional Tier 1 (AT1) instruments was issued by the Tax Authorities. The Resolution clarifies that AT1 instruments are hybrid instruments that may be classified as bonds. It also clarifies that the same treatment should apply to hybrid instruments with similar characteristics to those of the AT1 issued by non-financial companies.

Luxembourg

[Tax authorities issue circular on new PE definition](#)

On February 22, 2019, circular No. 19 on the new permanent establishment (PE) definition as laid down in article 16(5) of the Tax Adaptation Law was issued by the tax authorities. The circular clarifies that PE in a treaty country will be determined by the tax treaty negotiated in that country. Further, if a term is not defined by a tax treaty, domestic law should be applied. The circular also clarifies that a taxpayer will be considered as carrying out its activity in the other contracting state if the activity represents independent participation in the economic life of the other contracting state.

Netherlands

[Proposal on fiscal unity regime amended and published](#)

On February 20, 2019, the upper house of the parliament published a bill amending the fiscal unity regime that was approved by the lower house. The bill was submitted to the upper house for further approval.

For more information on the original bill proposal, please refer to [KPMG's TaxNewsFlash](#).

Poland

[Bill modifying Law on Exchange of Information in Tax Matters with Other Countries](#)

On February 13, 2019, a bill amending the Law on Exchange of Information in Tax Matters with Other Countries was submitted to the parliament by the Council of Ministers. The bill aligns the domestic legislation with the EU Directives on Administrative Cooperation ("DAC") 3 and 5. In addition, the bill amends the rules and procedures regarding the exchange of tax information.

Portugal

[Decree-Law amending automatic exchange of information rules](#)

On February 14, 2019, Decree-Law 17/2019 was published in the Official Gazette. The decree aligns the previous rules on exchange of information in tax matters with the EU Directive on Administrative Cooperation ("DAC 2"), and implements a new reporting regime on financial accounts information of Portuguese residents as from 2018. The Decree-Law entered into force on February 15, 2019.

Sweden

[Public consultation on deferral of withholding tax payment proposal](#)

On February 22, 2019, the Ministry of Finance opened a public consultation on a new law that proposes deferring withholding tax payments of non-residents in certain cases. The law proposal, based on the CJEU Sofina and Others case (C-575/17), introduces a new system under which a non-resident company may defer withholding tax payment when it has a deficit for the tax year in question. To qualify for a deferral, the company in question should be a resident in another EEA country or in a country with a tax treaty with provisions on exchange of information and assistance with the collection of taxes. The consultations closes on April 11, 2019.

[Public consultation on exchange of information legislation](#)

On February 18, 2019, the Ministry of Finance launched a public consultation on new exchange of information legislation. The amendments were based on the results of the OECD's Forum on Harmful Tax Practices peer review that revealed Sweden does not fully comply with the minimum standard for exchange of information (BEPS Action 5). Inputs will be received until April 1, 2019, and the new rules are expected to come into effect on November 1, 2019.

Switzerland

[Public consultation on automatic exchange of information in tax matters](#)

On February 27, 2019, the Federal Council launched a public consultation on the International Automatic Exchange of Information in Tax Matters rules contained in the Federal Act and Ordinance. The consultation regards the implementation of the recommendations provided by

the Global Forum on Transparency and Exchange of Information for Tax Purposes. The consultation closes on June 12, 2019.

For more information, please refer to [KPMG's TaxNewsFlash](#)



Local Courts

Netherlands

[Additional preliminary question submitted to the Dutch Supreme Court on dividend tax and the free movement of capital](#)

On February 26, 2019, the District Court Zeeland-West-Brabant, taking into account the CJEU Fidelity Funds case (C-480/16), has submitted additional preliminary questions to the Dutch Supreme Court. The questions concern the free movement of capital and the reimbursement of Dutch dividend withholding tax in relation to non-resident investment funds and their liability to pay taxes in their resident countries in respect of the dividend received.



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